STATE OF MICHIGAN

COURT OF APPEALS

EDWARD T. RAYS, Plaintiff-Appellee,	UNPUBLISHED August 10, 2006
v	No. 267789 Wayne Circuit Court Family Division
KATHRYN R. ROCHELEAU, Defendant-Appellant.	LC No. 92-213308-DM

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right an order granting plaintiff's motion to modify custody and child support. In a child custody case, we review the trial court's findings of fact for whether they are against the great weight of the evidence, we review discretionary rulings such as the ultimate custody decision for an abuse of discretion, and we review the trial court's legal findings for clear error. *Thompson v Thompson*, 261 Mich App 353, 358; 683 NW2d 250 (2004). We affirm in part, reverse in part, and remand.

As an initial matter, a party seeking a change in custody of a minor child must establish either "proper cause" or "a change of circumstances" before the trial court may consider the issue. *Vodvarka v Grasmeyer*, 259 Mich App 499, 508-509; 675 NW2d 847 (2003). "In order to establish a 'change of circumstances,' a movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a *significant* effect on the child's well-being, have materially changed." *Id*., 513 (emphasis in original). The *Vodvarka* Court emphasized that, over time, there will always be changes. *Id*. Therefore, the movant must show more than normal life changes and that those changes "have had or will almost certainly have an effect on the child." *Id*., 513-514. The determination would rest on the facts of the case and be guided by the statutory best interest factors. *Id*., 514.

Defendant first argues that the trial court erred in finding a change in circumstances. The trial court determined that a change in circumstances occurred when the minor child moved into plaintiff's home in May 2005. We agree with the trial court. Defendant had physical custody of the minor child from June 1993 until May 2005, and plaintiff had visitation. At the time of the move, the minor child's older siblings had all moved out of defendant's residence, and one of them was also living with plaintiff. Although secondary to the interests of an individual child, the courts favor keeping siblings together. *Foskett v Foskett*, 247 Mich App 1, 11; 634 NW2d

363 (2001). The minor child refused to express a preference between parents for fear of hurting their feelings, but she told the trial court that she and defendant had clashing personalities, that she did not need to be in defendant's home, and that she enjoyed being with her siblings. For the trial court to conclude under these facts that the minor child's change of residence constituted a significant change of circumstances is not against the great weight of the evidence.

Defendant next contends that the trial court improperly determined that an established custodial environment existed with both parties. We disagree.

The custodial environment of a child is established if, over an appreciable time, the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. MCL 722.27(1)(c). The age of the child, the physical environment, and the inclination of the custodian and the child regarding the permanency of the relationship shall also be considered. *Foskett, supra* at 5. If a child looks to both parents to provide guidance, discipline, the necessities of life, and parental comfort, an established custodial environment may exist with both parents. *Jack v Jack*, 239 Mich App 668, 671; 610 NW2d 231 (2000).

At the time of the hearing, the minor child was 14 years old. Defendant had physical custody of the minor child for 12 years, from June 1993 until May 2005. Both parents have homes near the minor child's high school. The trial court found that both parties' homes were stable and sufficient. Defendant enforced rules regarding makeup, clothes, and Internet and cell phone usage, and took the minor child on a trip to Philadelphia after the child moved in with plaintiff. Plaintiff took the minor child to and from school every day and helped her with her homework during May 2005. Before moving in with her father in May 2005, the minor child visited him every other weekend and for six weeks in the summers. Plaintiff provided the minor child's medical insurance and paid child support. The parties shared joint legal custody and mutually agreed to send the minor child to Northville High School using plaintiff's address, even though defendant's address would place her in Plymouth-Canton schools. The evidence supports the conclusion that both parties provided guidance, discipline, the necessities of life, and parental comfort. Therefore, the trial court's finding that an established custodial environment existed with both parties was not against the great weight of the evidence.

Defendant claims that the trial court failed to make specific findings of fact and that the trial court record is insufficient for this Court to review its application of law to the facts. The trial court found that both parties were "sources of guidance, discipline, and the necessities of life." Therefore, the trial court made the required finding regarding an established custodial environment. See *Jack*, *supra* at 670. The trial court is not required to elaborate any further, and its finding is supported by the facts.

Defendant alleges that the trial court failed to advise her that she had a right to an attorney, to receive and exchange discovery, and to call witnesses. She further alleges that the trial court did not advise her that the hearing would be to determine the best interest of the child. However, defendant presents no support for her argument that the trial court was required to advise parties of any of these things when they elect to proceed in propria persona after they had been represented by counsel throughout prior proceedings. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then

search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Failure to properly address the merits of this assertion constitutes abandonment of the issue. *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004). Moreover, defendant admits that she was able to acquire and read before the hearing copies of the materials relevant to the best interest factors that the trial court relied on. Therefore, we do not see that she was prejudiced in any event.

Defendant contends that the trial court applied the wrong burden of proof because it incorrectly determined that an established custodial environment existed with both parties. We decline to consider this argument because the same burden of proof would apply regardless of whether an established custodial environment existed with both parties or solely with defendant.

Defendant also argues that the trial court applied the incorrect burden of proof after determining that an established custodial environment existed. We agree. If an established custodial environment exists, the movant must prove by clear and convincing evidence that the requested change is in the children's best interests. MCL 722.27(1)(c); *Brown v Loveman*, 260 Mich App 576, 585; 680 NW2d 432 (2004). Otherwise, the movant's burden is a preponderance of the evidence that the requested change is in the children's best interests. *LaFleche v Ybarra*, 242 Mich App 692; 619 NW2d 738 (2000). Here, after correctly finding that a change of circumstances occurred and that an established custodial environment existed, the trial court incorrectly applied the preponderance of the evidence standard. Application of the wrong evidentiary standard constitutes an abuse of discretion regarding the ultimate determination of custody and requires us to remand. *Foskett, supra* at 8, 13.

The trial court's error requires us to vacate its custody award and remand the matter for reevaluation using the proper standard of proof. On remand, the trial court's reevaluation must include consideration of "up-to-date information" and "any other changes in circumstances arising since the trial court's original custody order." *Fletcher v Fletcher*, 447 Mich 871, 888-889; 526 NW2d 889 (1994). "Although not infallible, trial courts are more experienced and better situated to weigh evidence and assess credibility." *Id.*, 889. Because the trial court would be required to reassess them anyway, we decline to consider defendant's contention that the trial court's findings on the statutory best interest factors were against the great weight of the evidence. We direct the trial court to address the parenting time issue on remand as well.

We affirm the trial court's findings that there was a change in circumstances and that there was an established custodial environment with both parents. We vacate the trial court's custody order and remand for reevaluation thereof on the basis of up-to-date information under the proper burden of proof, clear and convincing evidence. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello